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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/679,090

10/03/2003

James Bennett

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08/02/2006

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EXAMINER

FRISBY, KESHA

ART UNIT

PAPER NUMBER

3715

DATE MAILED: 08/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/679,090

Applicant(s)

BENNETT, JAMES

Examiner

Kesha Frisby

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10/3/2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

1. Claim 20 is objected to because of the following informalities: The examiner is unsure as to what claim, claim 20 should be dependent on. Since claim 20 has similar claim language as claim 7, these two claims will be rejected in similar fashion.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 1, 2, 5, 6, 8, 10, 14, 18 & 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Diamond et al. (U.S. Patent Number 5,314,336).** Referring to claim 1, Diamond et al. discloses receiving at least one event by an audio enabled toy (detected optical symbol); selecting from within said audio enabled toy, at least one of a phoneme and a lingo from a first removable storage of said audio enabled toy that corresponds to said at least one received event (for example, column 1 lines 51-53), said at least one of said phoneme and said lingo being associated with a first language (column 5 lines 6-15); and generating within said audio enabled toy, an audio representation of said selected at least one of said phoneme and said lingo (for example, column 1 lines 49 & 50).

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Referring to claim 2, Diamond et al. discloses further comprising playing from within said audio enabled toy, said generated audio representation of said selected at least one of said phoneme and said lingo (for example, column 1 lines 49 & 50).

Referring to claims 5 & 18, Diamond et al. discloses further comprising replacing said first removable storage with a second removable storage comprising at least one of a phoneme and a lingo corresponding to a second language (abstract & column 4 line 56 – column 5 line 15).

Referring to claims 6 & 19, Diamond et al. discloses further comprising selecting from within said audio enabled toy, at least one of a phoneme and a lingo corresponding to second language from at least two removable storages simultaneously coupled to said audio enabled toy (Fig. 5: memory 57 & the associated text).

Referring to claim 8, Diamond et al. discloses wherein said received at least one event is at least one of a motion trigger, a sound trigger (the examiner views this limitation as what activates the audio playback means) and a button trigger.

Referring to claim 9, Diamond et al. discloses receiving at least one triggering event by an audio enabled toy (detected optical symbol); and generating from within said audio enabled toy, audio signals representative of: a plurality of phonemes for a native language (for example, column 1 lines 49 & 50); and a plurality of phonemes for at least one non-native language (column 5 lines 6-15).

Referring to claim 10, Diamond et al. discloses further comprising playing from within said audio enabled toy, sound corresponding to said generated audio signals (audio playback means).

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Referring to claim 14, Diamond et al. discloses a trigger unit that receives at least one event by an audio enabled toy (the examiner views this limitation as what activates the audio playback means); an audio processing unit that selects from within said audio enabled toy, at least one of a phoneme and a lingo from a first removable storage of said audio enabled toy that corresponds to said at least one received event (for example, column 1 lines 51-53), said at least one of said phoneme and said lingo being associated with a first language (column 5 lines 6-15); and said audio processing unit generates within said audio enable toy, an audio representation of said selected at least one of said phoneme and said lingo (for example, column 1 lines 49 & 50).

Referring to claim 15, Diamond et al. discloses wherein said audio processing unit plays from within said audio enabled toy, said generated audio representation of said selected at least one of said phoneme and said lingo (audio processing means) and said received at least one event is at least one of a motion trigger, a sound trigger and a button trigger (the examiner views this limitation as what activates the audio playback means).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 3, 7, 16 & 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Diamond et al. in view of Maa (U.S. Patent Number 6,572,431).**

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Referring to claims 3 & 16, Diamond et al. discloses the method according to claims 2, 14 and selecting from within said audio enabled toy, at least one of voice type corresponding to an infant, a toddler, a teenager, an adult, a male and a female for said playing of said generated audio representation (column 5 lines 16-18). *Diamond et al. does not disclose further comprising at least one of: adjusting from within said audio enabled toy, at least one of a duration, a pitch, a volume and a speed of said playing of said generated audio representation.* However, Maa teaches further comprising at least one of: adjusting from within said audio enabled toy, at least one of a duration, a pitch, a volume and a speed of said playing of said generated audio representation (column 13 lines 24-28). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include adjusting from within said audio enabled toy, at least one of a duration, a pitch, a volume and a speed of said playing of said generated audio representation, as disclosed by Maa, incorporated into Diamond et al. in order to alter the characteristics of its audio output.

Referring to claims 7 & 20, Diamond et al. discloses the method according to claim 1. *Diamond et al. does not discloses further comprising downloading from within an audio enabled toy, at least one of a phoneme and a lingo corresponding to a second language from at least one of a remote server, a remote storage and a personal computer, said downloading occurring via at least one of a wired and a wireless interface.* However, Maa teaches further comprising downloading from within an audio enabled toy, at least one of a phoneme and a lingo corresponding to a second language from at least one of a remote server, a remote storage and a personal

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computer (Fig. 1 & column 3 lines 47-53), said downloading occurring via at least one of a wired and a wireless interface (Fig. 1 & column 3 lines 57-61). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include downloading, as disclosed by Maa, incorporated into Diamond et al. in order to control the sound of the toy.

6. **Claims 4, 11-13 & 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Diamond et al. in view of Lyberg (U.S. Patent Number 5,752,227).** Referring to claims 4 & 17, Diamond et al. discloses the method according to claims 2 & 14. *Diamond et al. does not disclose further comprising excluding at least one of phonemes and lingos that are native to said first language prior to said playing.* However, Lyberg teaches further comprising excluding at least one of phonemes and lingos that are native to said first language prior to said playing (column 8 lines 22-30). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include excluding, as disclosed by Lyberg, incorporated into Diamond et al. so that the phonemes that do not occur in a particular language are omitted. Referring to claim 11, Diamond et al. discloses the method according to claim 9. *Diamond et al. does not disclose wherein at least a portion of said plurality of phonemes for said least one non-native language comprises phonemes that are uncommon to said native language.* However, Lyberg teaches wherein at least a portion of said plurality of phonemes for said least one non-native language comprises phonemes that are uncommon to said native language (column 8 lines 22-30). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include wherein

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at least a portion of said plurality of phonemes for said least one non-native language comprises phonemes that are uncommon to said native language, as disclosed by Lyberg, incorporated into Diamond et al. so that the phonemes that do not occur in a particular language are excluded.

Referring to claim 12, Diamond et al. discloses receiving at least one triggering event by an audio enabled toy (detected optical signal); and generating by said audio enabled toy, audio signals representative of phonemes for a non-native language (column 4 line 56 - column 5 line 15). *Diamond et al. does not disclose wherein at least a portion of said phonemes for said non-native language comprises phonemes that are not in common with any phonemes of a native language.* However, Lyberg teaches wherein at least a portion of said phonemes for said non-native language comprises phonemes that are not in common with any phonemes of a native language (column 8 lines 22-30). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include wherein at least a portion of said plurality of phonemes for said least one non-native language comprises phonemes that are uncommon to said native language, as disclosed by Lyberg, incorporated into Diamond et al. so that the phonemes that do not occur in a particular language are excluded.

Referring to claim 13, Diamond et al., as modified by Lyberg, discloses further comprising playing from within said audio enabled toy, sound corresponding to said generated audio signals (audio playback means of Diamond et al.).

Citation of Pertinent Prior Art

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Love (U.S. Patent Number 6,554,616) teaches a bilingual doll constructed for teaching young children specifically desired and selected words or phrases of a language other than the primary language spoken in the home.

Nichols (U.S. Publication Number 2002/0137013) teaches a toy figure that teaches a child a second language and includes a doll. Nichols also teaches a software disk containing software relating to the second language as insertable into the doll.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kesha Frisby whose telephone number is 571-272-8774. The examiner can normally be reached on Mon. - Wed. 7-3pm, Thu. 6:30-4pm & Fri. 7-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on 571-272-6678. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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